

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. (This is a GIL).

June 25, 1999

Dear Xxxxx:

This letter is in response to your letter dated April 12, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am so confused by your letter that I must ask for clarification. Allow me to restate our situation. We own a corporation call COMPANY. We have created a new service that will be sold through pre paid phone cards as a two way communication service. Outbound calls can be made using the prepaid balance on the card. Inbound calls can be received in voice mail that we provide as part of the service. All calls in and out of our system are carried by standard T-1 connections supplied by BUSINESS and processed through their network. Enclosed is a statement from BUSINESS which lists all of the taxes that we pay for these calls. You will note that the Illinois State messages tax and excise tax is listed as line items.

We intend to sell the cards to distributors who will in turn sell them to stores. Stores will sell them to the general public. These stores could be a gas station, a drug store, a pager store or a cellular phone store.

Your paragraph four says, 'In some cases, retail stores purchase telephone cards from telephone service providers and then sell the cards to customers at marked-up prices. In this scenario, we do not consider the retail stores to be retailers of communications. In that case the retail store is not responsible for collecting Telecommunications Excise Tax at the point of sale of the card to its customer or at any other point.'

Your paragraph six says, 'Therefore, as a practical matter, because retail stores will not know when sales are made what taxable services cardholders will later consume, retail stores should charge the tax on the full sales prices of the cards.'

This is confusing to me. Do we have all of the tax obligations covered or not? Should we charge tax to the distributor or not? Should the distributor charge tax or not? Should the stores charge tax or not? Please advise use.

The taxation of phone cards is very fact specific and tax liability obligations are difficult to ascertain absent detailed information regarding all transactions. Sales of telephone cards by retailers are not subject to Retailers' Occupation Tax. However, the Telecommunications Excise Tax may apply depending upon whether the retailers are in effect the retailers of the telecommunications. The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Generally, two factual scenarios exist. In the first scenario, retailers purchase telephone cards from telephone service providers and then sell the cards to customers at marked-up prices. In this instance, retailers of such telephone cards are not considered to be retailers of telecommunications and are not responsible for collecting Telecommunications Excise Tax. Their telephone service providers are responsible for collection and payment of the tax. The telephone service providers deduct the charge for the phone calls and the tax against the balance of the cards. An example of this scenario is where a convenience store purchases the telephone cards from the telephone company and then sells the cards to their customers at a marked-up price. In this instance, the telephone company is the service provider and is responsible for collecting and remitting the Telecommunications Excise Tax based upon the gross charges from sales of telecommunications. If the telephone company sells \$20.00 telephone cards to the convenience store for \$18.00 and the convenience store sells the card to its customer for \$20.00, \$20.00 is the amount of the gross charges subject to tax. The telephone company must collect the Telecommunications Excise Tax based upon this final amount because that is the amount paid for the act or privilege of originating or receiving telecommunications in this State.

In the second scenario, the retailers may purchase actual blocks of telecommunications from telephone service providers and resell it to their customers. In this instance, the retailers are considered to be retailers of telecommunications and as such are responsible for collecting the Telecommunications Excise Tax. It is in this case, where the retailer is considered to be a retailer of telecommunications, that retailers should, as a practical matter, charge the Telecommunications Excise Tax on the full sales

price of the telephone card. This is due to the fact that telecommunications retailers have the burden to establish that charges are exempt from tax. The only way to document this would be through the records showing the origination, for instance, of each call. Since the retailers are not likely to have this information, they should charge the tax on the full sales price. This rule only applies to the second scenario.

Your letter did not contain sufficient information for us to ascertain the specific nature of your activities. From the limited facts set forth in your letters, we surmise that your company is acting as a telecommunications service provider. If that is the case, you should purchase the telecommunications for resale and then collect and remit tax to the Department based on your gross charges.

As a general proposition, charges for voice mail services are not subject to Telecommunications Excise Tax if they are disaggregated from transmission charges and separately identified in the books and records of the telecommunications retailer. The provisions of 86 Ill. Adm. Code 495.100(c) state, in part, that "[c]harges for answering services, for example, whether provided electronically or by live operators, represent charges for the storage of information or data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are disaggregated and separately identified in the books and records of the retailer." If voice mail charges are not disaggregated from transmission charges, they are subject to tax.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers.

Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c).) These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. (35 ILCS 635/25(c).)

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Illinois municipalities are also authorized to impose a municipal telecommunications tax. (See 65 ILCS 5/8-11-17.) The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate not to exceed 5% of the gross charge for such telecommunications purchased at retail from a retailer by such person. (See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2).) This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 (65 ILCS 5/8-11-2) of the Illinois Municipal Code. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it. There is no equivalent statute for county governments.

In addition, the Emergency Telephone System Act provides that "[t]he corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to Section 8-11-2 of the Illinois Municipal Code, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c)." (See 50 ILCS 750/15.3(a) and (c).) "The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber's bill." (50 ILCS 750/15.3(f).) This surcharge is paid to the municipality, county or Joint Emergency Telephone System Board. (See 50 ILCS 750/15.3(g).) Questions regarding the surcharge should be addressed to the municipality or county imposing it.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.